

CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE

This Confidential Settlement Agreement and Release (this "Agreement") is entered into as of 1-17-19 by and between (a) Laudan Properties, LLC ("Laudan"), an Ohio limited liability company, with corporate headquarters located at 2204 E. Enterprise Parkway, Twinsburg, OH, 44087 and (b) DayMark Asset Funding, Inc., a Florida corporation; BPDm Properties 2018-1, LLC, a Delaware limited liability company; DayMark Trustee, LLC, a Delaware limited liability company & DayMark Master Trust, a Delaware statutory trust (collectively "DayMark"). DayMark's corporate headquarters is located at 11246 Alumni Way, Jacksonville, FL 32246. Collectively, Laudan and DayMark shall be referred to as the "Parties."

BACKGROUND

WHEREAS, DayMark hired Laudan to perform property maintenance and preservation services for its residential properties. Laudan performed work orders on DayMark properties until DayMark started falling behind in payments for work performed. Attempts to resolve the matter failed and Laudan filed a lawsuit in Ohio state court, which DayMark removed to federal court in the Northern District of Ohio, Case No. 5:18cv2873, (the "Litigation").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, Laudan and DayMark agree as follows:

AGREED TERMS

1. **Payment by DayMark.** DayMark will pay Laudan the sum of [REDACTED] (the "Settlement Payment") as provided in the amortization schedule attached as Exhibit A. The Settlement Payment is for work performed through November 16, 2018 and shall be paid by wired funds on or before the date schedule provided in Exhibit A. After the first payment of \$[REDACTED] ("Initial Settlement Payment"), which shall be made not later than three business days after counsel for Laudan delivers an executed copy of this Agreement to counsel for DayMark, DayMark will pay 18% interest (calculated from January 1, 2019) on the remaining \$[REDACTED] until the final payment is made. DayMark shall provide an executed copy of this Agreement to counsel for Laudan not later than the date that DayMark must pay the Settlement Payment. There will be no prepayment penalty. DayMark will make payments for any work orders completed after November 16, 2018 that remain with Laudan, within 30 days of receiving the invoice, with interest to accrue at the rate of 18% if not paid within 30 days.

The Parties acknowledge and agree that they are solely responsible for paying any attorneys' fees and costs they incurred in the Litigation and that neither Party nor its attorney(s) will seek any award of attorneys' fees or costs from the other Party, except as provided herein with regard to enforcement of this Agreement.

2. **Taxes.** Laudan shall be solely responsible for, and is legally bound to make payment of, any taxes determined to be due and owing (including penalties and interest related thereto) by it to any federal, state, local, or regional taxing authority as a result of the Settlement Payment. Laudan understands that DayMark has not made, and it does not rely upon, any representations regarding the tax treatment of the sums paid pursuant to this Agreement. Moreover, Laudan agrees to indemnify and hold DayMark harmless in the event that any

14. **Entire Agreement.** The recitals set forth at the beginning of this Agreement are incorporated by reference and made a part of this Agreement. This Agreement constitutes the entire agreement and understanding of the Parties and supersedes all prior negotiations and/or agreements, proposed or otherwise, written or oral, concerning the subject matter hereof. Furthermore, no modification of this Agreement shall be binding unless in writing and signed by each of the parties hereto.

15. **New or Different Facts: No Effect.** Except as provided herein, this Agreement shall be, and remain, in effect despite any alleged breach of this Agreement or the discovery or existence of any new or additional fact, or any fact different from that which either Party now knows or believes to be true. Notwithstanding the foregoing, nothing in this Agreement shall be construed as, or constitute, a release of any Party's rights to enforce the terms of this Agreement.

16. **Interpretation.** Should any provision of this Agreement be declared or be determined by any court to be illegal or invalid, the validity of the remaining parts, terms, or provisions shall not be affected thereby and said illegal or invalid part, term, or provision shall be deemed not to be a part of this Agreement. The headings within this Agreement are purely for convenience and are not to be used as an aid in interpretation. Moreover, this Agreement shall not be construed against either Party as the author or drafter of the Agreement.

17. **Choice of Law.** This Agreement and all related documents, including all exhibits attached hereto, and all matters arising out of or relating to this Agreement, whether sounding in contract, tort, or statute, are governed by, and construed in accordance with, the laws of the State of Ohio, United States of America, without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Ohio.

18. **Default and Attorney's Fees.** In the event of any litigation arising out of the enforcement of this Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees and other costs of collection. In the event of default of any payment due hereunder, interest shall be calculated at 24% on the remaining balance.

19. **Choice of Forum.** The federal courts of the Northern District of Ohio shall be the exclusive forums for litigation concerning this Agreement. All parties to this Agreement consent to personal jurisdiction in such courts as well as service of process by notice sent by regular mail to its registered agent.

20. **Reliance on Own Counsel.** In entering into this Agreement, the Parties acknowledge that they have relied upon the legal advice of their respective attorneys, who are the attorneys of their own choosing, that such terms are fully understood and voluntarily accepted by them, and that, other than the consideration set forth herein, no promises or representations of any kind have been made to them by the other Party. The Parties represent and acknowledge that in executing this Agreement they did not rely, and have not relied, upon any representation or statement, whether oral or written, made by the other Party or by that other Party's agents, representatives, or attorneys with regard to the subject matter, basis, or effect of this Agreement or otherwise.

21. **Counterparts.** This Agreement may be executed by the Parties in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

21. **Authority to Execute Agreement.** By signing below, each Party warrants and represents that the person signing this Agreement on its behalf has authority to bind that Party and that the Party's execution of this Agreement is not in violation of any by-law, covenants, and/or other restrictions placed upon them by their respective entities.

22. **Effective Date.** The terms of the Agreement will be effective when an executed copy of this Agreement is delivered to said counsel for Laudan as described in paragraph 1 above.

READ THE FOREGOING DOCUMENT CAREFULLY. IT INCLUDES A RELEASE OF KNOWN AND UNKNOWN CLAIMS.

IN WITNESS WHEREOF, and intending to be legally bound, each of the Parties hereto has caused this Agreement to be executed as of the date(s) set forth below.

WITNESS:

Marie Vanoster

Full Name: Marie Vanoster

Timothy J. Umbarger
for LAUDAN

Full Name: TIMOTHY J. UMBARGER

Title: VP

Dated: 1/15/2019

WITNESS:

Full Name: _____

for DAYMARK

Full Name: _____

Title: _____

Dated: _____

22. **Authority to Execute Agreement.** By signing below, each Party warrants and represents that the person signing this Agreement on its behalf has authority to bind that Party and that the Party's execution of this Agreement is not in violation of any by-law, covenants, and/or other restrictions placed upon them by their respective entities.

23. **Effective Date.** The terms of the Agreement will be effective when an executed copy of this Agreement is delivered to said counsel for Laudan as described in paragraph 1 above.

READ THE FOREGOING DOCUMENT CAREFULLY. IT INCLUDES A RELEASE OF KNOWN AND UNKNOWN CLAIMS.

IN WITNESS WHEREOF, and intending to be legally bound, each of the Parties hereto has caused this Agreement to be executed as of the date(s) set forth below.

WITNESS:

Full Name: _____

WITNESS:

Melisse Mossbrooks
Full Name: Melisse Mossbrooks

for LAUDAN

Full Name: _____

Title: _____

Dated: _____

Jeffrey P. Austis
for DAYMARK ASSET FUNDING, INC.

Full Name: Jeffrey P. Austis

Title: Managing Director

Dated: 1-17-19

Amount \$ 500,000.00
 Down Payment \$ 75,000.00 1/7/2019
 Rate 18%

Date	Balance	Payment	Interest	Principal	Balance
Down Payment	\$ 500,000.00	\$ 75,000.00		\$ 75,000.00	\$ 425,000.00
1/30/2019	\$ 425,000.00	\$ 88,862.96	\$ 6,375.00	\$ 82,487.96	\$ 342,512.04
2/28/2019	\$ 342,512.04	\$ 88,862.96	\$ 5,137.68	\$ 83,725.28	\$ 258,786.76
3/29/2019	\$ 258,786.76	\$ 88,862.96	\$ 3,881.80	\$ 84,981.16	\$ 173,805.59
4/30/2019	\$ 173,805.59	\$ 88,862.96	\$ 2,607.08	\$ 86,255.88	\$ 87,549.72
5/31/2019	\$ 87,549.72	\$ 88,862.96	\$ 1,313.25	\$ 87,549.72	\$ -
		\$ 519,314.81	\$ 19,314.81	\$ 500,000.00	

EXHIBIT A

Filed Liens

ADDRESS	CITY	COUNTY	STATE	ZIP	PARCEL NUMBER	AMOUNT
425 E Coal St	Brazil	Clay	IN	47834	11-01-31-200-360.000-002	\$2,403.00
2012 North Milton St	Muncie	Delaware	IN	47303	18-11-04-407-011.000-003	\$6,880.00
1308 W 4th St	Marion	Grant	IN	46952	27-06-01-401-135.000-008	\$6,455.50
1631 173rd Pl	Hammond	Lake	IN	46324	45-07-17-101-017.000-023	\$1,170.00
1626 Lora St	Anderson	Madison	IN	46013	48-12-30-402-046.000-003	\$1,715.55
6033 English Avenue	Indianapolis	Marion	IN	46219	49-10-11-120-012.000-770	\$2,160.00
135 S 4th Street	Clinton	Vermillion	IN	47842	83-13-15-240-038.000-002	\$2,190.00
1124 West South St	Bluffton	Wells	IN	46714	90-08-05-504-010.000-004	\$2,022.20
1207 Sycamore Ave	Columbia	richland	SC	29203	R16816-11-16	\$4,068.47
4430 Hulda Ave	Columbia	richland	SC	29203	R09211-02-14	\$1,300.00
48 Hutto Ct	Columbia	richland	SC	29204	R14107-04-26	\$2,685.00
517 3rd Ave	Conway	Faulkner	AR	72032	710-03954-000	\$3,548.40
1952 Kitchens Rd	Macon	Bibb	GA	31211	S061-0034	\$7,675.60
6150 Dupree Ave	St. Louis	St. Louis	MO	63135	12H220759	\$5,099.96
78 North 8th Street	Newark	Licking	OH	43055	054-253962-00.000	\$844.00
48 North Pembroke Ave.	Zanesville	Muskingum	OH	43701	63-04-05-12-000 and 63-04-05-13-000	\$1,022.60
153 West 3rd Street	Xenia	Greene	OH	45385	M40000100090025100	\$2,082.78
169 West North Bend	Cincinnati	Hamilton	OH	45216	239-0003-0035-00	\$750.00
213 North Cherry Street	Lebanon	Warren	OH	45036	1336307004	\$690.00
409 Hyde Park Drive	Hamilton	Butler	OH	45013	P6412-130-00-049	\$1,055.00
817 Walbridge Ave	Toledo	Lucas	OH	43609	0309277 and 07289031	\$1,250.00
1111 Hayes Ave	Fremont	Sandusky	OH	43420	34-50-00-1463-02	\$1,290.00
1211 Wamajo	Sandusky	Erie	OH	44870	57-03778.000	\$4,500.00
2211 Ridge Creek Court	Dayton	Montgomery	OH	45426	H33-01611-0021	\$1,664.40
2526 Scioto Trail	Portsmouth	Scioto	OH	45662	31-2019	\$680.00
3413 Rosedale Rd	Cleveland Heights	Cuyahoga	OH	44112	681-10-104	\$720.00
4327 Fairview Dr.	Toledo	Lucas	OH	43612	106971	\$6,952.70
4425 Sheller Ave.	Dayton	Montgomery	OH	45432	1391014070005	\$1,285.60
TOTAL:						\$74,160.76

EXHIBIT

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